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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/808,379   | 03/25/2004  | Jan Skojd Knudsen    | 034896-0128         | 5324             |
| 22428  | 7590        | 07/12/2004           | EXAMINER            |                  |
| FOLEY AND LARDNER<br>SUITE 500<br>3000 K STREET NW<br>WASHINGTON, DC 20007 |             |                      | BELL, KENT L        |                  |
|  |             |                      | ART UNIT            | PAPER NUMBER     |
|  |             |                      | 1661                |                  |

DATE MAILED: 07/12/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/808,379

Applicant(s)

KNUDSEN, JAN SKOJD

Examiner

Kent L. Bell

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- application filed 3/25/04*
- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 3/25/04 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

*K.L. Bell*

**Detailed Action**

**Objection to the Disclosure**

**37 CFR 1.163**

The following is a quotation of section (a) of 37 CFR 1.163:

(a) The specification must contain as full and complete a disclosure as possible of the plant and the characteristics thereof that distinguish the same over related known varieties, and its antecedents, and must particularly point out where and in what manner the variety of plant has been asexually reproduced. In the case of a newly found plant, the specification must particularly point out the location and character of the area where the plant was discovered.

**35 USC 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

As specific to United States Plant Patent applications, the specifics of 37 CFR 1.164 (reproduced below) are controlling:

The claim shall be in formal terms to the new and distinct variety of the specified plant as described and illustrated, and may also recite the principal distinguishing characteristics. More than one claim is not permitted.

**Detailed Action**

In plant applications filed under 35 U.S.C 161, the requirements of 35 U.S.C. 112 are limited. The following is a quotation of 35 U.S.C. 162:

No plant patent shall be declared invalid for noncompliance with section 112 of this title if the description is as complete as is reasonably possible. The claim in the specification shall be in formal terms to the plant shown and described.

The disclosure is objected to under 35 CFR 1.163(a) and under 35 U.S.C. 112, first paragraph, because the specification presents less than a full, clear, and complete botanical description of the plant and the characteristics which define same per se and which distinguish the plant from related known cultivars and antecedents.

More Specifically:

A. Page 1, lines 4 and 9, Applicant states the instant plant's species designation is "*hortorum*". This is an unrecognized species designation within the Genus *Dahlia*. Applicant should verify that this species designation is accurate and if so provide the Examiner with literature showing that this is a recognized species designation. Upon reviewing various horticulture dictionaries it appears applicant may have intended the species designation to be "*hortensis*".

**Detailed Action**

B. Page 1, lines 8-11, Applicant should set forth in the specification the origin of the instant plant. Applicant has not provided any information regarding whether the instant plant originated from crossing two plants, a self pollination, an open pollination, or a natural or induced mutation. The origin of the instant plant should be unambiguously set forth in the specification. Further, parental cultivar names should be set forth, if known, and their respective patent status is requested, if known.

C. Page 1, line 24 and Abstract, Applicant states Red-purple “flower” color. Rather than stating “flower” it appears --ray floret-- would be the more appropriate term to use in these instances.

D. Page 2, line 5, Applicant states “comparison to ‘is’”. It appears applicant left out the instant cultivar’s name. Correction is necessary. Also, “ ‘is’ ” should be replaced by --is--.

E. Applicant should set forth in the specification a brief comparison between the instant plant and its parent or parental cultivars, such need not be in any great detail but should at least distinguish the plants from one another.

**Detailed Action**

F. Page 2, lines 9 and 16, and page 3, line 12, Applicant should delete “flower” and insert --inflorescence-- as Dahlias are composites. Composites are referred to as having inflorescences not flowers. Correction is necessary.

G. Page 2, line 12, Applicant states which “more” accurately describe the actual colors of the new Dahlia. The colors set forth in the specification must accurately describe the actual colors of the instant plant. Therefore, applicant should review the colorations set forth and if accurate delete the term “more”. Correction and/or clarification is necessary.

H. Page 3, line 10, Applicant should set forth in the specification additional information relative to the instant plant’s stem including the typical and observed stem length and diameter.

I. Page 3, lines 11 and 12, Applicant should set forth in the specification additional information relative to the instant plant’s lateral branches including the typical and observed lateral branch coloration with reference to the employed color chart.

J. Page 3, lines 14-24, Applicant states there are “4 – 5” pairs of leaves per lateral branch and that the leaves are “Up to 16 cm” in length and “14 cm” in width. These recitations seem to indicate that compound leaves are produced and that the information set forth is for the leaflets.

**Detailed Action**

Dahlias can typically produce both compound and single leaves. Applicant should review the types of leaves produced. Applicant should set forth in the specification information relative to the instant plant's compound and single leaves, if produced, including the typical and observed compound, single leaf, and leaflet length and width. Applicant should further indicate at the lines stated above whether the information set forth is for single leaves or leaflets or something else. Correction and/or clarification is necessary.

K. Page 4, line 1, If compound leaves are produced as stated above in "J", applicant should set forth in the specification information relative to the instant plant's petiolule including the typical and observed petiolule length, diameter, and coloration with reference to the employed color chart.

L. Page 4, line 2, Applicant should delete "FLOWER" and insert --INFLORESCENCE-- as Dahlias are composites. Composites are referred to as having inflorescences not flowers. Correction is necessary.

M. Page 4, lines 3, 8, and 9, Applicant should delete "flowers" and "Flower" and insert --inflorescences-- and --Inflorescence-- as Dahlias are composites. Composites are referred to as having inflorescences not flowers. Correction is necessary.

**Detailed Action**

N. Page 4, line 11, Applicant states “3” buds are present per lateral stem but previously states “2” inflorescences per lateral branch. This appears to be contradictory. Correction and/or clarification is necessary.

O. Page 4, line 15, Applicant states “Petal”. It appears applicant is actually describing the ray florets and disc florets. Applicant should delete “Petal” and insert --Ray florets and Disc florets--, if such is accurate.

P. Page 4, line 16, to page 5, line 2, Applicant should set forth in the specification the diameter of the disc portion of the inflorescence.

Q. Page 4, line 16, Applicant states “fused petal”. This recitation is not understood as it is unclear what applicant is intending. Correction and/or clarification is necessary.

R. Page 4, line 18, Applicant states there are “5” disc florets and “5” ray florets per inflorescence. However, when compared to the photographic illustrations provided, these recitations do not appear to be accurate. It appears there are many more disc florets and ray florets present per inflorescence. Applicant should verify the number of disc florets and ray



**Detailed Action**

florets and set forth in the specification the typical and observed amount of disc florets and ray florets.

S. Page 4, lines 21-23, to page 5, line 2, Applicant sets forth a margin and apex descriptor and color designations. However, it is unclear whether the descriptors and coloration designations set forth are for the ray or disc florets or both. Applicant should set forth in the specification the typical and observed ray and disc floret apex and margin descriptor and color designations.

T. Page 5, lines 1 and 2, Applicant states mature upper surface color is “65A” with base of “5C”. However, when compared to the photographic illustrations provided these recitations do not appear to be accurate. It appears there is a whitish or a very light pink coloration toward the margins on the upper surface of the ray florets. If such is accurate, applicant should set forth in the specification a color designation with reference to the employed color chart. In addition, Applicant should review the ray floret colorations (both surfaces immature and mature) and set forth in the specification the typical and observed ray floret colorations with reference to the employed color chart.

**Detailed Action**

U. Page 5, line 3, Applicant should delete "Sepals" and insert --Phyllaries-- as Dahlias are composites. Composites are referred to as having phyllaries not sepals. Correction is necessary.

V. Page 5, lines 15-21, Applicant sets forth information relative to the instant plant's reproductive organs. However, applicant has not set forth where the reproductive organs are located, i.e. Gynoecium present on ray florets and Androecium present on both ray and disc florets. Applicant should set forth in the specification where the gynoecium and androecium are present.

W. Page 5, line 18, Applicant states "1 disc, 1 ray per floret". This recitation is unclear. It appears applicant may have intended to state --1 per disc floret and 1 per ray floret--. Correction and/or clarification is necessary.

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**Detailed Action**

**Future Correspondence**

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Wang, can be reached at (571) 272-0811.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

K. L. Bell

**KENT BELL  
PRIMARY EXAMINER**

*Kent L. Bell*